

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF UTAH, IN AND FOR WASATCH COUNTY

THE CENTER CREEK WATER AND
IRRIGATION COMPANY, a Cor-
poration,

Plaintiff,

vs.

JOHN A. THOMAS,

Defendant.

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FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This cause having come on regularly for trial before the Court sitting without a jury on the first day of December, A. D., 1897, upon the Complaint of Plaintiff and the answer of the Defendant, and the parties litigant being present in Court, and represented by their attorneys; A. C. Hatch and J. H. McDonald appearing as counsel for the Plaintiff and William Buys and Samuel A. King appearing as counsel for the Defendant, and the Court having heard the proofs of the respective parties, and having duly considered the same and having heard the arguments of the respective attorneys therein, and the cause having been duly submitted to the Court for its decision; the Court now finds the following facts:

(1) That the Plaintiff, the Center Creek Water and Irrigation Company was incorporated in the year 1887, and ever since has been and now is a Corporation organized and existing under and by virtue of the laws of Utah.

(2) That Center Creek is a natural stream of water rising in Wasatch County and flowing through Center Creek Precinct in said county and near the lands belonging to the stockholders of the Plaintiff Corporation.

(3) That the stockholders of the Plaintiff Corporation are the several owners of tracts of land situate on, along

and in the vicinity of said Center Creek; and the said lands without artificial irrigation are barren and unproductive, but when irrigated they produce agricultural crops in great abundance.

(4) That more than fifteen years ago the Plaintiff Corporation, and its grantors and predecessors in interest, by means of dams and ditches, diverted from said Center Creek the water thereof for irrigation, domestic and culinary purposes, and that since the date of said appropriation, said waters have been used by the Plaintiff and its grantors and predecessors in interest for irrigating their said lands and for domestic and culinary purposes, and said use has been beneficial and necessary for the purposes for which said water was appropriated.

(5) That since the organization of the Plaintiff Corporation, the said Plaintiff has had the authority to and has been engaged in managing, controlling and distributing said waters to and among its stockholders entitled to the use thereof, according to their respective rights.

(6) That the irrigation season commences about the 1st day of April of each and every year, and continues down to the 1st day of October of each and every year; that the high water season of said Center Creek commences the first day of April, in each and every year, and continues down to the 15th day of June, in each and every year; and the low water season commences the 15th day of June of each and every year, and ends the 1st day of October of each and every year.

(7) That the Plaintiff corporation and its stockholders are the owners of and entitled to the use of all of the waters of Center Creek as against the Defendant from the 15th day of June, of each and every year, down to the 1st day of October, in each and every year, except as to a certain

spring hereinafter mentioned.

(8) That the Plaintiff and its stockholders are the owners and entitled to the use, as against the Defendant herein, of all of the waters of said Center Creek down to the 15th day of June, in each and every year, except as to a stream of water flowing one hundred cubic feet per minute for forty-eight hours every twenty days during the period last above named.

(9) That the Defendant, John A. Thomas is the owner of and in the possession of about twenty and one half acres of land, situate in Center Creek Precinct, Wasatch County, State of Utah, which land is arid and requires artificial irrigation in order to produce agricultural crops; that since the year 1883, the Defendant and his grantors, have been in the possession of said land, and have cultivated and irrigated the same, and raised crops thereon and have erected improvements upon the same.

(10) That more than twelve years ago, the Defendant, his grantors and predecessors in interest appropriated of the then unappropriated waters of Center Creek, in addition to a certain spring herein after mentioned, sufficient thereof to irrigate eighteen acres of land from the 1st day of April down to the 13th day of June, of each and every year, and that this period is the high water season.

(11) That a stream of water flowing one hundred cubic feet per minute for forty-eight hours every twenty days during the said high water season, to-wit: From the 1st day of April down to the 15th day of June in each and every year, in addition to a certain spring hereinafter described, is a quantity sufficient and necessary to properly and economically irrigate the Defendants said land.

(12) That the Defendant, his grantors and predecessors

in interest have used said water from Center Creek from the 1st day of April down to the 15th day of June, in each and every year since the said water was first appropriated by them, openly, adversely, uninterruptedly and peaceably, as against all the world and particularly as against the Plaintiff Corporation.

(13) That situate in said Center Creek Precinct and near the land of the Defendant is a certain spring of water which rises near what is known as Lindsay's Field, and which is a tributary of said Center Creek, that more than twelve years ago the Defendant, his grantors and predecessors in interest appropriated all of the waters flowing from said spring at all seasons of the year, and from the date of said appropriation, the Defendant, his grantors and predecessors in interest have used all of the waters of said spring in and upon the lands of said Defendant for irrigation, domestic and culinary purposes, and that the use of said water of said spring by the said Defendant is reasonably necessary for the irrigation of said lands and for domestic and culinary purposes; that during each and every year since the Defendant's appropriation of the waters of said spring said waters have been used openly, peaceably, uninterruptedly and adversely to the Plaintiff and its stockholders and each and all of them at all seasons of the year; that the use and appropriation of the waters of said spring have been and are in addition to the use and appropriation of said one hundred cubic feet of water hereinbefore set forth and described.

(14) That the Defendant has not at any time wrongfully, unlawfully or at all interfered with the waters belonging to the Plaintiff or its stockholders, nor does he now threaten to divert or obstruct the flow of any of the water belonging to

the said Plaintiff Stockholders.

(16) That the Plaintiff by its agents and officers, in the year 1897, wrongfully interfered with the Defendant's right to the use of the waters of Center Creek and to the said spring, to which he was entitled as above set forth; that the Plaintiff will, unless enjoined or restrained from so doing, continue such unlawful interference with the Defendant's use of the waters of said Center Creek and said spring.

CONCLUSIONS OF LAW

As conclusions of law from foregoing facts the Court now finds and decides:

(1) That the Plaintiff is the owner and has the right to the use of all of the waters of Center Creek, as against the Defendant, from the 15th day of June down to the first day of October in each and every year; and that from the 1st day of April to the 15th day of June, of each and every year, the Plaintiff is the owner and entitled to the use of all of the waters of Center Creek as against the Defendant, except a stream of water flowing one hundred cubic feet per minute for forty-eight hours every twenty days, and a certain spring herein after mentioned.

(2) That the Defendant is the owner and has the right to the use of sufficient of the waters of Center Creek to irrigate eighteen acres of land from the 1st day of April down to the 15th day of June of each and every year; and that a stream of water flowing one hundred cubic feet per minute for forty-eight hours every twenty days, and all the waters of a certain spring hereinafter mentioned at all seasons of the year is sufficient water to economically irrigate the Defendant's said land.

(3) That the Defendant is the owner and entitled to

the use of all the waters of a certain spring mentioned and named in the Findings of Fact herein, at all seasons of the year.

(4) That the parties to this action, both Plaintiff and Defendant are entitled to a decree of this Court confirming and quieting their titles to the use of the waters of said Center Creek and the spring aforesaid as above set forth; and that the Defendant is entitled to an injunction preventing and enjoining the Plaintiff, its officers, agents, servants and employees and all persons claiming under them, from in any manner interfering with the Defendant's rights to the use of the waters of Center Creek as hereinbefore stated, from the 1st day of April to the 15th day of June of each and every year, and to his right to the use of the water of the spring above referred to, during all the seasons of the year.

Dated this 15th day of June, A. D., 1898.

/s/ Warren N. Dusenberry
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